

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**TIMOTHY MITCHELL,**

Petitioner,

v.

**MARK NOOTH,**

Respondent.

**MOSMAN, J.,**

No. CV 08-331-HU

OPINION & ORDER

On August 3, 2010, Magistrate Judge Hubel issued Findings and Recommendation ("F&R") (#43) in the above-captioned case recommending that I DENY Mr. Mitchell's Petition for Writ of Habeas Corpus (#2), DISMISS this case, and DENY a Certificate of Appealability. No objections were filed.

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328

F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Hubel's recommendations, and I ADOPT the F&R (#43) as my own opinion. I therefore DENY Mr. Mitchell's Petition for Writ of Habeas Corpus (#2), DISMISS this case, and DENY a Certificate of Appealability.

IT IS SO ORDERED.

DATED this 27<sup>th</sup> day of August, 2010.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Court